

SENATE BILL REPORT

E2SHB 1117

As of February 16, 2022

Title: An act relating to promoting salmon recovery through revisions to the state's comprehensive planning framework.

Brief Description: Promoting salmon recovery through revisions to the state's comprehensive planning framework.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lekanoff, Fitzgibbon, Bateman, Simmons, Ramel, Peterson, Goodman, Ryu, Kloba, Chopp, Pollet, Macri and Davis).

Brief History: Passed House: 1/26/22, 57-40.

Committee Activity: Housing & Local Government: 3/16/21, 3/24/21 [DP-WM, DNP]; 2/16/22.

Brief Summary of Bill

- Adds salmon recovery as a goal under the Growth Management Act (GMA).
- Requires the land use element of comprehensive plans adopted under the GMA to include a strategy that achieves net ecological gain of salmon habitat.
- Requires the capital facilities element and transportation element of comprehensive plans adopted under the GMA to include a schedule for elimination of all identified fish passage barriers.
- Requires the Department of Fish and Wildlife to adopt rules that establish criteria for net ecological gain which certain counties and cities must meet through adoption of comprehensive plans.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, which are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as fully planning under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, a land use element, and a capital facilities plan element, among others. When developing their comprehensive plans, counties and cities must consider various goals set forth in statute, including, for example, urban growth, housing, and economic development.

Growth Management Act—Comprehensive Plan Updates. Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four different year classes for when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins in 2024 for King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties.

Regional Salmon Recovery Plans. If a species is listed as threatened or endangered under the Endangered Species Act, recovery plans must be developed and adopted. Recovery plans are developed with the input of multiple parties, including federal, state, and tribal governments. Recovery plans for salmon and steelhead are published by the National Oceanic and Atmospheric Administration—Fisheries. Regional salmon recovery plans have been adopted for multiple regions within Washington, including Puget Sound. The Puget Sound Salmon Recovery Plan includes individual recovery plans for individual watersheds within the broader Puget Sound region.

Aquatic Resources Mitigation Act. Under state and federal law, a project proponent whose action would impact aquatic resources must first attempt to avoid and minimize that impact. For unavoidable impacts, compensatory mitigation is required to replace the loss of aquatic resource function. The Aquatic Resources Mitigation Act sets forth a number of mitigation options that project proponents may select to comply with mitigation requirements.

Shoreline Management Program. The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The Department

of Ecology and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, SMA regulations are developed in local shoreline master programs. All counties and cities with shorelines of the state are required to adopt master programs that regulate land-use activities in shoreline areas of the state.

Summary of Bill: Growth Management Act—Goals. Salmon recovery is added as a goal under the GMA. Under the salmon recovery goal, it is a goal of the GMA to support recovery and enhancement of salmon and steelhead stocks through achievement of net ecological gain to fulfill Washington's tribal treaty obligations, support nontribal commercial and recreational fisheries, and achieve delisting and recovery of threatened or endangered salmon and steelhead runs under the federal Endangered Species Act.

"Net ecological gain" means a standard for a comprehensive plan adopted under the GMA in which the ecological integrity within each water resource inventory area (WRIA) or independent natural drainage that flows directly into marine waters of the planning area is improved and enhanced during the planning period because of the measures adopted by the planning body, including no net loss of ecological function with respect to the permitting of individual projects to advance salmon recovery and other environmental benefits. The advancement of ecological function and achievement of net ecological gain within each WRIA or independent natural drainage that flows directly into marine waters will occur through the appropriate selection and implementation of publicly funded projects. A publicly funded project includes voluntary grant programs, salmon recovery projects, ecological improvements made through the municipal stormwater permit process, and investments made as a result of the capital facilities element and transportation element of the comprehensive plan.

Comprehensive Plans—Net Ecological Gain. Beginning with plan updates adopted after January 1, 2024, the land use element of comprehensive plans must include a strategy that achieves net ecological gain of in-water and upland habitats, vegetation, water quantity, water quality, and other natural features which contribute to anadromous fish habitat on a watershed basis.

The strategy must be developed after providing notice and an opportunity to consult each federally recognized Indian tribe with property, tribal reservation land, or usual and accustomed fishing areas affected by the planning jurisdiction. The achievement of net ecological gain may rely on activities or mitigation carried out by a jurisdiction physically located outside the jurisdiction if still within the same watershed.

Development regulations adopted pursuant to the net ecological gain requirement may not require individual private projects to achieve net ecological gain. Development regulations adopted pursuant to the net ecological gain requirement must require projects owned by public entities including, but not limited to, state agencies, counties, cities, towns, public utilities districts, schools, libraries, and transportation agencies, achieve net ecological gain.

The capital facilities element and transportation element of comprehensive plans must include a schedule for elimination of all identified fish passage barriers, consistent with the prioritization schedule identified by the Fish Passage Barrier Removal Board.

Criteria for Net Ecological Gain. Through consultation with each federally recognized Indian tribe and local governments, the Department of Fish and Wildlife (DFW), must adopt rules to establish criteria for net ecological gain and consistency with the regional salmon recovery plans that counties and cities fully planning under the GMA must meet through adoption of their comprehensive plans to support salmon recovery. The net ecological gain rules adopted by DFW must account for the impact of the heat island effect on ecological function. The rules adopted by DFW must ensure that, where appropriate, the interjurisdictional coordination process required by the GMA addresses the issue of salmon recovery.

The rules adopted by DFW may not require or assume the proponents of individual private projects will be responsible for achieving net ecological gain. Rules adopted by DFW must ensure individual private projects achieve no net loss of ecological function, and net ecological gain is achieved through the appropriate selection of publicly funded projects, and voluntary projects whose purpose is salmon recovery, but may receive funding from either public or private sources.

DFW, in consultation with affected local governments and federally recognized Indian tribes, must establish current environmental baseline conditions within counties and cities fully planning under the GMA, and must then monitor progress toward salmon recovery goals in those jurisdictions. DFW must monitor parameters that affect salmonid health, including stream temperatures, impervious surfaces, and tree canopy cover. When monitoring progress that individual jurisdictions have made toward salmon recovery goals, DFW must monitor the efforts made by counties and cities to address the effect of urban heat islands on salmonid health. DFW must submit a report of its monitoring to the Governor, the Legislature, and affected local governments beginning in 2022, and every other year thereafter.

Mitigation Hierarchy Requirements and Compensatory Mitigation Requirements. Development regulations that protect critical areas must apply mitigation hierarchy requirements and compensatory mitigation requirements. Before using a lower level in the mitigation hierarchy, project proponents must demonstrate it is not possible to mitigate environmental impacts through actions taken consistent with higher levels of the mitigation hierarchy. Mitigation imposed under both the Aquatic Resources Mitigation Act and the SMA must also apply mitigation hierarchy requirements and compensatory mitigation requirements.

"Mitigation hierarchy requirement" means a proponent must first avoid impacts where feasible, must then minimize impacts where avoidance is not feasible, and must then

mitigate any remaining impacts where avoidance and minimization are not feasible. "Compensatory mitigation ratio" is defined as a measurement of the size, temporal duration, or quality of mitigation required by a permitting agency to ensure impacts to regulated aspects of the environment from an activity subject to a permit are fully mitigated over the life of the activity or project subject to the permit.

Funding. The obligation of local governments to comply with specified provisions in the act is contingent on the provision of state funding to local governments for complying with these requirements. The obligation of local governments to comply with these provisions takes effect two years after the date the Legislature appropriates state funding to comply with these requirements.

The provisions of the act contingent on funding are:

- amendments to the goals of the GMA;
- amendments to critical areas protection requirements of the GMA;
- amendments to comprehensive plan requirements under the GMA;
- amendments to the Aquatic Resources Mitigation Act;
- rules related to net ecological gain; and
- mitigation requirements imposed pursuant to the SMA.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Regular Session 2022): PRO: Salmon are a significant economic resource for Washington and create many jobs. Net ecological gain will become a formal goal of the GMA, not just a special consideration. Ecological improvements are coming too slowly for species like salmon. Thirty years of no net loss of habitat is not working. We need to require the improvement of salmon habitat similar to requiring other projects to make improvements like installing sidewalks and providing schools. Cities were involved in developing salmon recovery plans, so it is important to be consistent with those plans. This is not a takings, public funding and public projects will contribute to net ecological gain. Local governments can protect water and restore salmon habitat with proper funding and support. There is an opportunity now to make these changes in time for the next round of GMA updates. Public funds should not contribute to loss of salmon habitat. Counties were partners in developing the policy and have been engaged in finding workable solutions. It is important to come together with local government to work on salmon recovery. There is a concern about whether the fish passage barrier schedule implies that there is funding available to replace all of the barriers. There needs to be clarity that net ecological gain impacts only public projects, and should not

impact programs like the Voluntary Stewardship Program (VSP).

CON: What will the cost be for the net ecological gain standard? Other public infrastructure costs will increase for utilities, roads, water, and sewer. This will impact housing costs, which will only further impact the housing crisis. This will dilute funding for other priorities including transportation and local infrastructure. It is unclear how this bill interacts with the VSP; there is concern that this bill could interfere with the good work taking place under the VSP. This could be a vehicle for using site potential tree height to increase riparian zones. The language is too broad and leaves too much to fill in the blanks. The net ecological gain standard attempts to dodge the takings issue. What is the impact for private projects that hook up to public infrastructure? We won't know what net ecological gain looks like until rulemaking is conducted. The state needs to take bold action to recovery salmon. The net ecological gain concept is not clear and science based. Family foresters are already doing more for salmon. The state should fully fund existing programs to address salmon habitat. The urban areas have not done their fair share, with the burden falling on rural areas.

OTHER: Integrating local government work with salmon recovery and fish passage is a practical approach that ensures the work doesn't just occur in separate silos. This will add complexity in an already complex area. It is not clear what the net ecological gain standard will look like.

Persons Testifying: PRO: Representative Debra Lekanoff, Prime Sponsor; Commissioner Kate Dean, Jefferson County; Councilmember Kaylee Galloway, Whatcom County; Paul Jewell, Washington State Association of Counties; Don Gourlie, Puget Sound Partnership; Tom McBride, WDFW; Dave Andersen, Department of Commerce; Carl Schroeder, Association of Washington Cities; Brendan Flynn, Commercial Fisherman; Will Hall, Puget Sound Partnership Leadership Council, former Mayor of Shoreline; Nora Nickum, Seattle Aquarium; Justin Allegro, The Nature Conservancy; Mindy Roberts, Washington Environmental Council.

CON: Dan Wood, WA State Dairy Federation; Jan Himebaugh, Building Industry Association of Washington; Tom Davis, Washington Farm Bureau; Robert Vos; Heather Hansen, Washington Farm Forestry Assn; Mike Ennis, Association of Washington Business; Bill Clarke, WA REALTORS; Bridget Coon, Bar U Ranch Co.; Patrick DePoe, Makah Tribal Council ; Ken Miller; Jay Gordon, self.

OTHER: Alex Soldano, Sound Transit.

Persons Signed In To Testify But Not Testifying: No one.